

House Bill 188

By: Representative Scott of the 153rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to provide for prepaid state and local cigarette taxes; to change certain
3 provisions regarding definitions; to change certain provisions regarding exemptions with
4 respect to sales and use taxes on cigarettes; to change certain provisions regarding dealers'
5 sales and use tax returns; to provide for procedures, conditions, and limitations; to change
6 certain provisions regarding penalties; to provide an effective date; to repeal conflicting laws;
7 and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
11 amended in Code Section 48-8-2, relating to definitions regarding sales and use taxes, by
12 adding new paragraphs to read as follows:

13 "(5.3) 'Prepaid state cigarette tax' means the tax levied under Code Section 48-8-30 on
14 the retail sale of cigarettes as defined in Code Section 48-11-1 collected prior to that retail
15 sale.

16 (5.4) 'Prepaid local cigarette tax' means any local sales and use tax which is levied on the
17 sale or use of cigarettes as defined in Code Section 48-11-1 and imposed in an area
18 consisting of less than the entire state, however authorized, including, but not limited to,
19 such taxes authorized by or pursuant to constitutional amendment; by or pursuant to
20 Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended,
21 known as the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965' or by or
22 pursuant to Article 2, 2A, 3, or 4 of this chapter. The person collecting and reporting the
23 prepaid local tax for the local jurisdiction shall provide a schedule as to which jurisdiction
24 these collections relate. This determination shall be based upon the shipping papers of
25 the conveyance that delivered the cigarettes to the dealer or consumer in the local
26 jurisdiction. A distribution as defined in Code Section 48-11-1 may rely upon the

representation made by the purchaser as to which jurisdiction the shipment is bound and prepare shipping papers in accordance with those instructions."

SECTION 2.

Said title is further amended in Code Section 48-8-30, relating to imposition of sales and use taxes, by adding new subsections to read as follows:

"(l) In the event any distributor as defined in Code Section 48-11-1 purchases any cigarettes on which the prepaid state cigarette tax or prepaid local cigarette tax or both have been imposed pursuant to this Code section and resells the same to a governmental entity that is totally or partially exempt from such tax under paragraph (1) of Code Section 48-8-3, such distributor shall be entitled to either a credit or refund. The amount of the credit or refund shall be the prepaid state cigarette tax or prepaid local cigarette tax or both rates for which such governmental entity is exempt. To be eligible for the credit or refund, the distributor shall reduce the amount such distributor charges for the fuel sold to such governmental entity by an amount equal to the tax from which such governmental entity is exempt. Should a distributor have a liability under this Code section, the distributor may elect to take a credit for those sales against such liability.

(m) The prepaid state and local cigarette taxes shall be imposed at the time tax is imposed under Code Section 48-11-2."

SECTION 3.

Said title is further amended by revising Code Section 48-8-82, relating to imposition of the joint county and municipal sales and use tax, as follows:

"48-8-82.

When the imposition of a joint county and municipal sales and use tax is authorized according to the procedures provided in this article within a special district, the county whose geographical boundary is conterminous with that of the special district and each qualified municipality located wholly or partially within the special district shall levy a joint sales and use tax at the rate of 1 percent. Except as to rate, the joint tax shall correspond to the tax imposed and administered by Article 1 of this chapter. No item or transaction which is not subject to taxation by Article 1 of this chapter shall be subject to the tax levied pursuant to this article; except that the joint tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined by paragraph (5.2) of Code Section 48-8-2, shall be applicable to prepaid local cigarette tax as the term is defined in paragraph (5.4) of Code Section 48-8-2, and shall be applicable to the sale of food and beverages only to the extent provided for in paragraph (57) of Code Section 48-8-3."

SECTION 4.

Said title is further amended by revising Code Section 48-8-87, relating to the administration and collection of the joint county and municipal sales and use tax, as follows:

"48-8-87.

The tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of each county whose geographical boundary is conterminous with that of a special district and of each qualified municipality located wholly or partially therein. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter; except that the joint tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined by paragraph (5.2) of Code Section 48-8-2 and shall be applicable to prepaid local cigarette tax as the term is defined in paragraph (5.4) of Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50."

SECTION 5.

Said title is further amended by revising subsection (b) of Code Section 48-8-102, relating to the imposition of the homestead option sales and use tax, as follows:

"(b) When the imposition of a local sales and use tax is authorized according to the procedures provided in this article within a special district, the county whose geographical boundary is conterminous with that of the special district shall levy a local sales and use tax at the rate of 1 percent. Except as to rate, the local sales and use tax shall correspond to the tax imposed and administered by Article 1 of this chapter. No item or transaction which is not subject to taxation by Article 1 of this chapter shall be subject to the sales and use tax levied pursuant to this article; except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined by paragraph (5.2) of Code Section 48-8-2, shall be applicable to prepaid local cigarette tax as the term is defined in paragraph (5.4) of Code Section 48-8-2, and shall be applicable to the sale of food and beverages only to the extent provided for in paragraph (57) of Code Section 48-8-3."

SECTION 6.

Said title is further amended by revising subsection (a) of Code Section 48-8-104, relating to the administration and manner of distribution of the homestead option sales and use tax, as follows:

"(a) The sales and use tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of each county whose geographical boundary is conterminous with that of a special district. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter; except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined by paragraph (5.2) of Code Section 48-8-2 and shall be applicable to prepaid local cigarette tax as the term is defined in paragraph (5.4) of Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of the amount of the sales and use tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50."

SECTION 7.

Said title is further amended by revising subsection (c) of Code Section 48-8-110.1, relating to imposition of the county special purpose local option sales and use tax, as follows:

"(c) Any tax imposed under this part shall be at the rate of 1 percent. Except as to rate, a tax imposed under this part; shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this part; except that a tax imposed under this part shall apply to sales of motor fuels as prepaid local tax as that term is defined by paragraph (5.2) of Code Section 48-8-2, shall be applicable to prepaid local cigarette tax as the term is defined in paragraph (5.4) of Code Section 48-8-2, and shall be applicable to the sale of food and beverages as provided for in division (57)(D)(i) of Code Section 48-8-3."

SECTION 8.

Said title is further amended by revising Code Section 48-8-113, relating to the administration of the county special purpose local option sales and use tax, as follows:

130 "48-8-113.

131 A tax levied pursuant to this part shall be exclusively administered and collected by the
132 commissioner for the use and benefit of the county and qualified municipalities within such
133 special district imposing the tax. Such administration and collection shall be accomplished
134 in the same manner and subject to the same applicable provisions, procedures, and
135 penalties provided in Article 1 of this chapter; except that the sales and use tax provided
136 in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is
137 defined by paragraph (5.2) of Code Section 48-8-2 and shall be applicable to prepaid local
138 cigarette tax as the term is defined in paragraph (5.4) of Code Section 48-8-2; provided,
139 however, that all moneys collected from each taxpayer by the commissioner shall be
140 applied first to such taxpayer's liability for taxes owed the state; and provided, further, that
141 the commissioner may rely upon a representation by or in behalf of the county and
142 qualified municipalities within the special district or the Secretary of State that such a tax
143 has been validly imposed, and the commissioner and the commissioner's agents shall not
144 be liable to any person for collecting any such tax which was not validly imposed. Dealers
145 shall be allowed a percentage of the amount of the tax due and accounted for and shall be
146 reimbursed in the form of a deduction in submitting, reporting, and paying the amount due
147 if such amount is not delinquent at the time of payment. The deduction shall be at the rate
148 and subject to the requirements specified under subsections (b) through (f) of Code Section
149 48-8-50."

150 SECTION 9.

151 Said title is further amended by revising paragraph (1) of subsection (c) of Code Section
152 48-8-201, relating to imposition of the municipal water and sewer projects and costs tax, by
153 adding a new subparagraph to read as follows:

154 "(A.1) Sales of cigarettes as prepaid local cigarette tax as that term is defined by
155 paragraph (5.4) of Code Section 48-8-2;"

156 SECTION 10.

157 Said title is further amended by revising Code Section 48-8-204, relating to administration
158 and collection of the municipal water and sewer projects and costs tax, as follows:

159 "48-8-204.

160 A tax levied pursuant to this article shall be exclusively administered and collected by the
161 commissioner for the use and benefit of the municipality imposing the tax. Such
162 administration and collection shall be accomplished in the same manner and subject to the
163 same applicable provisions, procedures, and penalties provided in Article 1 of this chapter;
164 except that the sales and use tax provided in this article shall be applicable to sales of motor

fuels as prepaid local tax as that term is defined by paragraph (5.2) of Code Section 48-8-2 and shall be applicable to prepaid local cigarette tax as the term is defined in paragraph (5.4) of Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or in behalf of the municipality or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50."

SECTION 11.

Said title is further amended in Code Section 48-11-2, relating to excise taxes on tobacco products, by adding a new subsection to read as follows:

"(h)(1) As used in this paragraph, the term 'prepaid state cigarette tax' shall have the same meaning as provided in paragraph (5.3) of Code Section 48-8-2.

(2) At the time the excise tax imposed by this Code section attaches to cigarettes, a prepaid state cigarette tax shall be collected. The same person remitting the excise tax imposed under this Code section, but on a separate schedule, shall remit the prepaid state cigarette tax to the state. The tax shall be separately invoiced throughout the chain of distribution until it reaches the dealer who makes the retail sale and shall be at the same rate as provided under Code Section 48-8-30."

SECTION 12.

This Act shall become effective on January 1, 2010.

SECTION 13.

All laws and parts of laws in conflict with this Act are repealed.